



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 16, 1995

Ms. Susan D. Albers
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR95-005

Dear Ms. Albers:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30432.

The Office of the Governor (the "governor") received an open records request for a copy of "all complaints and/or correspondence to the office of the Governor re: any publication of the Governor's letter to PMI Corp." You state that the governor maintains two records coming within the ambit of the request, one of which you seek to withhold from the public pursuant to sections 552.103 and 552.107(1) of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision No. 588 (1991) at 1. You contend that section 552.103 protects the record at issue because "[t]he Attorney General's office, in a memo to the Open Government Section ... has argued that Section 552.103 applies to its records related to the PMI Corp." However, section 552.103 applies only where the litigation involves or is expected to involve the governmental body which is claiming the exception. Open Records Decision No. 392 (1983). Because you have not demonstrated that the requested record relates to litigation to which the governor is a party, the governor may not withhold this record pursuant to section 552.103.

Section 552.107(1) of the Government Code protects "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas." See Open Records Decision No. 574 (1990). In instances where an attorney represents a

governmental entity, the attorney-client privilege protects only an attorney's legal advice and information revealing a client's confidential communications to the attorney. *Id.*

The record at issue consists of a faxed communication from the Office of the Attorney General to the governor regarding PMI Corp. After reviewing this communication, this office could discern no information that constitutes either an attorney's legal advice or a confidential communication from the governor to the Office of the Attorney General. Consequently, the record at issue does not come under the protection of section 552.107(1). The governor therefore must release this record in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hamilton Guajardo
Assistant Attorney General
Open Government Section

KHG/RWP/rho

Ref.: ID# 30432

Enclosure: Submitted document

cc: Billie E. Breedlove
Breedlove and Bensey
6420 Richmond, Suite 312
Houston, Texas 77057
(w/o enclosure)